

Mortgagee's Certificate**U.S. Department of Housing
and Urban Development
Office of Housing**

(Execute Original plus two copies)

OMB Approval No. (Exp. 00/00/00)

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Project Name:

Project Number:

Lender:

Borrower:

☐ Multifamily Accelerated Processing (MAP)☐ Traditional Application Processing (TAP)**To the U.S. Department of Housing and Urban Development (HUD):****GENERAL**

1. The entity executing this Certificate is the Lender under that certain Security Instrument, _____, (the Mortgage) dated _____, 20____, executed by _____, the Borrower, securing a Note evidencing a loan by the Lender to the Borrower in the principal sum of \$_____ which the Lender has agreed to make on condition that it be insured by HUD pursuant to the Contract of Insurance comprised of Section _____ of the National Housing Act and its implementing regulations. The Lender understands that the Mortgage, the Note, this Certificate, and any documents submitted with this Certificate are considered to be consistent with and shall be interpreted consistently with HUD's regulations as they pertain to the Contract of Insurance. The Lender agrees to be bound by such regulations and by all Directives of HUD.

2. The Lender submits separately a check for \$_____ covering the first mortgage insurance premium, together with the other items called for in the HUD commitment dated _____, 20____, and in any extensions or amendments thereof (the Commitment). The Lender certifies that all conditions of the Commitment have been fulfilled to date.

CONSTRUCTION LOANS

3. For all cases involving construction advances, the agreement providing for the advancement of said loan is set forth in a Building Loan Agreement dated _____, 20____, of which a duplicate original and two copies are submitted separately.

4. The Lender submits separately a certified survey of the Mortgaged Property and title evidence as specified in the applicable Directives of HUD together with evidence that the Mortgaged Property is not zoned or restricted so as to prevent the construction of the Improvements.

5. Applications for insurance of advances of mortgage proceeds will be submitted to HUD as required under the applicable Directives of HUD at least five days prior to the date the Lender desires to disburse such advance. Applications for advances will be accompanied by all documentation required by HUD. The Lender agrees that the amount approved for disbursement by HUD will not be released unless the current extension of the title policy evidences that (a) the Mortgage is prior to all liens and encumbrances which may have

attached or defects which may have arisen subsequent to the recording of the Mortgage, except such liens or other matters as have been approved by HUD and (b) the Mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of the Mortgage, regardless of whether such liens attached prior to the recording date.

FEES AND CHARGES

6. The charges enumerated below are included in mortgage proceeds and will be disbursed by the Lender at such time as is approved by HUD:

- (a) HUD application and commitment fee \$_____
- (b) Initial service charge, if any \$_____ (not exceeding 2%)
- (c) Title and recording expense \$_____ (including cost of surveys, recording fees, mortgage and stamp taxes, etc. associated with initial endorsement)
- (d) HUD inspection fee \$_____
- (e) Ground rent during construction \$_____ (may collect only one year's rent at initial endorsement)
- (f) Third party contractor fees \$_____ (applies only to MAP)

ESCROWS AND DEPOSITS

7. The Lender has received from the Borrower a working capital deposit in the form of (cash or letter of credit) _____ in the sum of \$_____ which the Lender agrees to maintain and control. Funds in this deposit may be released or allocated for the purposes indicated in the attached Working Capital Escrow Deposit Agreement and for no other purpose unless the Lender obtains the prior written approval of HUD.

8. The Borrower has deposited with the Lender, or subject to the control and order of the Lender in a depository satisfactory to the Lender, the following sums required by the

Commitment: (Check and complete applicable paragraphs.)

☐ Cash required, if any, over the proceeds of the Mortgage, to complete the project in the amount of \$_____. The Lender understands that these funds must be used before any Mortgage proceeds are advanced, except when, with the prior written approval of HUD, the funds will be disbursed on the following pro-rata basis _____.

☐ Cash required, if any, over the proceeds of the Mortgage, for costs to complete the project in the amount of \$_____ will be represented by a grant/loan from _____, a nongovernmental source. The Lender understands that these funds must be used before any Mortgage proceeds are advanced.

☐ The amount required, if any, over the proceeds of the Mortgage, for costs to complete the project, is \$_____, and will be represented by a grant/loan from _____, a governmental source.

a. This amount is in the form of _____ (cash or letter of credit). The Lender understands that these funds must be used before any Mortgage proceeds are advanced, except when, with the prior written approval of HUD, the funds will be disbursed on the following pro-rata basis _____; or

b. The Lender has collected an escrow in the amount of \$_____. This amount represents 10 percent of the grant/loan proceeds being provided from this source. This escrow is in the form of

_____ (cash or letter of credit). The agreement providing for the advancement of grant/loan proceeds executed/to be executed among the Lender, HUD, and the governmental agency or instrumentality is attached.

☐ Escrow deposit guaranteeing payment for off-site utilities and streets in the amount of

\$_____. This deposit is in the form of _____ (cash or letter of credit).

☐ Interest rate differential escrow in the amount of \$_____ which represents the dollar difference between the interest rate in effect after cut-off for cost certification and the permanent interest rate upon which the mortgage debt service is calculated. The escrow is in the form of _____ (cash or letter of credit).

☐ [For certain transactions involving a loan for a Health Care Facility insured under Section 232] The Lender shall require that the Borrower establish and maintain with the Lender, or in a depository satisfactory to the Lender, a Sinking Fund in accordance with the Regulatory Agreement executed by the Borrower (and Lessee, if applicable) and HUD for those Section 232 cases where Medicaid reimbursement is on a depreciation plus interest basis rather than a pass-through of principal and interest on the Mortgage. (Said Sinking Fund will be required in addition to the Reserve for Replacements.) The Lender agrees to administer the Sinking Fund in accordance with the attached Sinking Fund Agreement.

9. The Lender submits separately: (Check applicable paragraphs.)

☐ Off-site bond in the amount of \$_____.

☐ Evidence to the effect that required off-site utilities and streets will be provided by the public authorities having jurisdiction or by public utility companies serving the Project.

10. The Lender submits separately a duplicate copy of the following assurance for the completion of the project: (Check applicable paragraph.)

☐ Performance bond and payment bond of a HUD-approved Surety in the penal sum of \$_____ for each bond.

☐ Assurance of Completion Agreement reflecting the deposit with _____ of a fund in the amount of \$_____ in the form of _____ (cash or letter of credit) which fund has been deposited and is subject to the Lender's order and will be disbursed with the written approval of HUD in the manner and for the purposes provided for in said agreement.

☐ Personal undertaking in the amount of \$_____. It is understood that HUD reserves the right to decide the acceptability of the principals in the personal undertaking.

11. Attached is the sponsor's guarantee to meet an initial operating deficit as required by the Commitment: (if required, check and complete the applicable paragraph.)

☐ Agreement of Sponsors to Furnish Additional Funds in the amount of \$_____ and Bond Guaranteeing Sponsor's Performance.

☐ Escrow Agreement evidencing a (U.S. bearer bonds with a market value of at least 115 percent of the required escrow amount, cash, or letter of credit) _____ deposit in the amount of \$_____.

12. Attached is the sponsor's guarantee to meet the 12-month debt service reserve escrow as required by the Commitment: (Applicable only to certain Section 232 projects. If required, check and complete the applicable paragraph.)

☐ The Lender has accepted a personal note from the Borrower for \$_____ which the Lender will hold until final completion along with Bond Guaranteeing Sponsor's Performance. Upon final completion, the note

will be converted to cash or a letter of credit. The Lender agrees that HUD will treat the Borrower's note as a cash item and reduce the insurance benefits by the amount of the Borrower's note if there is a Mortgage default and the Lender makes a claim for insurance benefits before the Borrower's note is converted to cash.

☐ An escrow deposit in the amount of \$_____. This deposit is in the form of _____ (cash or letter of credit).

13. The Lender submits separately the appropriate security agreement(s) executed by the Borrower (or Lessee, if appropriate, in the case of Health Care Facilities) covering all of the Personalty which, under applicable law, may be subject to a security interest under the Uniform Commercial Code (UCC), whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds (UCC Collateral). The Lender will file timely appropriate Financing Statements under the UCC. The Lender agrees to file timely the appropriate Financing Statements under the UCC on behalf of HUD pursuant to HUD's rights under the Regulatory Agreement.

14. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Mortgage or at such later date as may be agreed to by HUD in writing, the Lender shall require a monthly deposit with the Lender or in a depository satisfactory to the Lender of one-twelfth (1/12) of the sum set forth in the Commitment constituting a Reserve for Replacements Fund, which fund will be subject to the Lender's order and from which fund withdrawals may be made only upon the receipt of HUD's written permission. For transactions involving mortgages insured under Section 232 of the National Housing Act, the Reserve for Replacement shall be bifurcated, as set forth in the Commitment and in the Regulatory Agreement for Health Care Facilities, to cover (1) the costs associated with the replacement

of major moveable equipment and (2) the costs associated with major repairs to the physical structure of the Project. The use of a bifurcated fund will ensure that the monies in the Reserve for Replacement are sufficient to pay for the costs associated with not only the replacement of major moveable equipment but also for major repairs to the physical structure of the Project. Separate sub-accounts shall be maintained within the Reserve for Replacement and monies in these two accounts shall not be commingled. Lender shall ensure that amounts are withdrawn from a particular sub-account only for use consistent with that particular sub-account as approved by HUD. The amount of the monthly deposit may be increased or decreased from time to time at the direction of HUD. These funds will be deposited with the Lender by the Borrower in cash or in the form of obligations of, or guaranteed as to principal by, the United States of America. The Lender will, upon appropriate request by the Borrower, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the required deposits will be forwarded to HUD within 60 days of the date such deposits are due.

15. In cases where a Residual Receipts Fund is required under the Regulatory Agreement, the Lender shall deposit or place in a depository satisfactory to the Lender all funds received from the Borrower after the end of each semi-annual or annual fiscal period, and will notify HUD if such funds are not received within 90 days of the end of such fiscal period. The Residual Receipts Fund will be subject to the control of the Lender and from which fund withdrawals may be made only upon the receipt of HUD's written permission except for permitted distributions pursuant to the terms of the Regulatory Agreement. These funds will be deposited with the Lender by Borrower in cash or in the form of obligations of or guaranteed as to principal by the United States of America. The Lender will, upon appropriate request by

the Borrower, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. The Lender agrees to notify HUD in writing of any irregularity with respect to such Residual Receipts Fund immediately upon such irregularity coming to the attention of the Lender.

16. The Lender agrees to furnish HUD with a complete report of the results of any inspection of the Mortgaged Property that the Lender is required to perform under the applicable regulations or Directives of HUD.

17. The Lender certifies that if the Borrower defaults in its obligation to complete construction of the Improvements on the Mortgaged Property, the Lender has the right, transferable to HUD, to complete the Improvements as provided in the Building Loan Agreement. In the event completion of the Improvements is undertaken by either the Lender or by HUD, the undisbursed balance of the Mortgage may be advanced for this purpose and to discharge any valid liens or claims against the Mortgaged Property. Such advances will be considered as made for the account of the Borrower and will be covered by the terms of the Mortgage and the Contract of Insurance.

18. So long as the Contractor or the Borrower, or, upon default, the Contractor's surety or any other person authorized to act on behalf of or in substitution for them shall be willing and able to complete construction of the Improvements, the Lender, upon HUD's request will advance up to the undisbursed balance of the Mortgage and will authorize release of any grant or loan proceeds or other funds available under Paragraph 8 above for that purpose. The term "Contractor" as used above, means any person, corporation or other entity contracting directly with the Borrower for the construction of all or any portion of the Improvements.

19. The Lender certifies that all insurance policies on the Project required by the terms of the insured Mortgage will have attached thereto a standard mortgagee clause making the loss payable to the Lender and the Secretary, Department of Housing and Urban Development, as their interests may appear.

20. The Lender certifies and agrees that: (Check and complete the following applicable subparagraphs)

☐ (a) The Lender has not imposed and will not impose a financing charge of any kind directly or indirectly, other than the initial service charge as set forth above.

☐ (b) In addition to the initial service charge, the Lender has collected in the form of (cash or letter of credit) _____ for the amount of \$_____ as a discount or financing charge for the construction loan. Also, an amount of \$_____ has been collected in the form of (cash or letter of credit) _____ to cover construction loan extension fees. In an attached addendum, the Lender has identified the time frames in which the extension fees must be paid.

☐ (c) The Lender intends to retain the permanent loan and has collected a permanent placement fee of \$_____. In addition to the initial service charge and permanent placement fee, the Lender has collected in the form of (cash or letter of credit) _____ the amount of \$_____ as a discount or financing charge for the permanent loan.

☐ (d) The Lender has a firm commitment from _____ to purchase the loan when fully disbursed and fully insured at a financing charge or discount of _____ percent and the Lender has collected in the form of (cash or letter of credit) _____ the amount of _____

\$_____ to cover said charge or discount.

☐ (e) This project will be financed with (tax-exempt or taxable) _____ bonds. Therefore, the Lender has collected in the form of (cash or letter of credit) _____ the amount of \$_____ to cover the costs of issuance. A statement is attached itemizing these costs with an explanation of the necessity of each cost.

☐ (f) Additional financing charges or discount of \$_____ are to be collected under the attachment hereto for the purpose shown in (b), (c), (d), (e). (Strike inapplicable letters.) The arrangement for the collection of additional financing charges or discount must follow forms and procedures prescribed by HUD.

☐ (g) A servicing fee that is included in the Mortgage rate and an administrative fee for investing the cash held in the Reserve Fund for Replacements and any other interest-bearing escrows required by HUD.

☐ (h) The Mortgage Loan to be made to the Borrower will be financed through funds being provided by a third-party investor through the issuance to the investor of construction and permanent participation certificates pursuant to a participation agreement between the Lender and the investor, with respect to which agreement the Lender has agreed to repay the investor at a stated interest rate according to a fixed payment schedule.

☐ (i) The Mortgage Loan to be made to the Borrower will be financed through funds being provided by a third-party investor through the issuance to the investor of construction and permanent fully modified, pass-through, mortgage-backed securities, guaranteed as to principal and interest by the Government National Mortgage Association.

No financing charges other than charges disclosed herein have been or will be made.

Until final endorsement for insurance by HUD, all funds collected pursuant to items (c), (d), or (e) above and not paid over to the permanent lender, plus any funds returned by the permanent lender, shall be held for the account of the Borrower and shall be subject to HUD's control and direction in the event of a claim under the Contract of Insurance.

21. Except for Mortgage advances approved by HUD or notes executed pursuant to section (20)(f) above, the Lender does not have outstanding and will not make loans or advances to the Borrower, any of the sponsors, the general contractor, or the architect for any purpose connected directly or indirectly with this project without prior written approval of HUD. The Lender has not made or offered, and will not make or offer, any guarantees, pledges, reservations of sums to become due or other inducements to any entity or person to make loans or advances which the Lender would be prohibited from making under the terms of this paragraph.

CERTIFICATIONS

22. The Lender certifies that the Lender has not made and will not make payment of any kickback or fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this Mortgage transaction, including the purchase or sale of the Mortgaged Property, except for compensation paid or to be paid, if any, for the actual performance of services and approved by HUD.

23. The Lender certifies that in any case where a letter of credit has been accepted instead of cash, (a) such unconditional and irrevocable letter of credit has been issued by (1) another banking institution; (2) the Lender, subject to receiving HUD's written permission prior to initial endorsement; (b) if demand under the letter of credit is not immediately met, the Lender will forthwith provide cash equivalent to

the undrawn balance thereunder without recourse to the Borrower, any sponsor, the general contractor or the architect; (c) the Lender has not made and will not make any inducements as described in Section 21 above to procure issuance of letters of credit; and (d) the Lender has made every reasonable effort to satisfy itself that both the Borrower and the institution which issued the letter of credit are aware that demands may be made for cash under the terms of the letter of credit and that no possibility exists that Mortgage proceeds will be available to reimburse the issuing bank for such cash pay-outs.

24. For mortgages funded with the proceeds of State or local bonds, GNMA mortgage-backed securities, other bond obligations as defined by HUD, any of which contain a lock-out and/or penalty provision, the Lender agrees, in the event of a default during the term of the prepayment lock-out and/or penalty (i.e., prior to the date on which prepayments may be made with a penalty of one percent or less), to:

- (a) Request a three-month extension of the deadline prescribed by 24 C.F.R. Section 207.258 for filing a notice of the Lender's intention to file an insurance claim and the Lender's election to assign the Mortgage;
- (b) assist the Borrower in arranging a refinancing to cure the default and avert an insurance claim, if HUD grants the requested (or a shorter) extension of notice filing deadline;
- (c) report to HUD at least monthly on any progress in arranging a refinancing;
- (d) otherwise cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;
- (e) require any successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out and/or penalty;

(f) after completion of the Improvements, notify HUD of the delinquency when a payment is not received by the 16th day of the month in which it is due.

25. The Lender certifies to HUD that the following are the only identities of interest, as defined by HUD in MAP Directives, between the Lender and the Borrower, any Principal of the Borrower, the Contractor, any subcontractor, or the seller of the land: _____ (must indicate "none" for MAP transactions).

26. The Lender certifies to HUD that no identity of interest, as defined by HUD in MAP Directives, exists between the Lender and the counsel to the Borrower.

27. The Lender certifies to HUD that all funds, escrows, and deposits specified in this Certificate and any and all other funds held in connection with the Mortgage transaction covered by this Certificate shall be funds held for or on behalf of the Borrower pursuant to the Contract of Insurance.

28. For any case involving components stored off-site, the Lender agrees to:

- (a) File Financing Statements (UCC-1), in the proper jurisdiction with the proper office;
- (b) Make whatever additional filings are necessary to maintain a first lien on the components until they are incorporated into the building(s);
- (c) Release the Financing Statement filings as appropriate;
- (d) Unconditionally certify by letter to HUD with each disbursement request that the Security Instrument(s) is (are) a "first lien" on the building components covered by the Instrument(s). This certification will be supported by an opinion from the Lender's legal counsel;

(e) In the event of default under the Mortgage, either assign the Lender's security interest to HUD or acquire title through foreclosure to the components intended for use or incorporation into the building(s) and convey title to HUD;

(f) Require a performance bond and payment bond each in an amount equal to 100 percent of the construction contract be used to satisfy the assurance of completion requirements.

29. The Lender certifies that all HUD form closing documents submitted to HUD in connection with this transaction (with the exception of the Opinion by Counsel to the Borrower and the accompanying Certification by the Borrower) conform to those documents the Lender obtained from HUD on _____ and such documents have not been changed or modified in any manner except as suitably identified and specifically approved by HUD field counsel as evidenced by the attached memorandum. It is understood that changes and modifications do not include filling in blanks, attaching exhibits or riders, deleting inapplicable provisions or making changes authorized by applicable HUD regulations and/or Directives. The Lender further certifies that all closing documents submitted to and accepted by HUD in connection with this transaction are listed in the attached memorandum.

30. The Lender agrees to notify HUD in writing immediately upon learning of any violation of

the Regulatory Agreement by the Borrower, the Lessee and/or the Operator, as applicable, in certain transactions involving the lease of the Project.

31. The Lender agrees to promptly review any Borrower's request to transfer the Project and not unreasonably withhold the Lender's approval of the transfer. If HUD approves the transfer, the Lender agrees to execute a Release and Assumption Agreement or a Mortgage Modification Agreement incorporating the Regulatory Agreement in the Mortgage. It is understood that the Lender's consent to the transfer will in no way prejudice the Lender's rights under the Contract of Insurance with HUD. The Lender shall not collect any fee in connection with reviewing the transfer except the Borrower may reimburse the Lender for actual expenses incurred by the Lender in connection with reviewing the transfer.

32. The definition of any capitalized term or word used herein can be found in this Mortgagee's Certificate, the Regulatory Agreement between the Borrower and HUD, and/or the Security Instrument by the Borrower. The term "financing charge(s)," as used herein shall mean any charge, direct or indirect, for supplying the loan to or servicing the loan for the Borrower. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Date

Lender

	By

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims, and penalties under 24 C.F.R parts 24, 28 and 30.